

BOARD OF ZONING APPEALS
MINUTES
December 19, 2006

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on November 28, 2006, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, and Kansas.

The following board members were in attendance:

C. BICKLEY FOSTER, ERMA MARHAM in at 1:37 pm, DWIGHT GREENLEE, STEVEN ANTHIMIDES, and JAMES RUANE

Board members absent:

JOSHUA BLICK
JUSTIN GRAHAM

City of Wichita staff present:

HERB SHANER – Office of Central Inspection present.
SHARON DICKGRAFE – City of Wichita, Law Department

The following Planning Department staff members were present:

JESS MCNEELY, Secretary.
YOLANDA ARBERTHA, Recording Secretary.

FOSTER We will start the Board of Zoning Appeal meeting at 1:35pm. We have approval for two sets of minutes. The September 26, 2006 minutes, are you satisfied Mr. Ruane?

RUANE Yes and I thank Yolanda for sending out a supplemental mailing. I revised the minutes by shortening and abbreviating the minutes. I had concern about the precedent we were setting with the outcome of the remarks. I simplified the minutes of the discussions to the USD.

FOSTER Are there any questions? I looked over the minutes. I realized that when we talk we are not using full sentences. When the minutes are made, it may look like a word is left out. Actually, because we knew what we were saying we did not say the words. So, we left out some words because we knew what we were talking about. Nevertheless, I think these minutes are in good shape. Do I hear a motion to adopt the minutes for September 26?

Markham Moved

Ruane Seconded

Motion Carried unanimously.

FOSTER We then have the minutes for November 28, 2006. Does anyone have any questions? Do we have a motion for these minutes?

Greenlee Moved

Markham Seconded

Motion carried unanimously

FOSTER Next we have the 2007 Calendar, I have posted it. All of the holidays have been avoided and every meeting is the fourth Tuesday except for the month of December. Are there any discussions about the meeting and closing date schedule for 2007?

RUANE Moved

GREENLEE Seconded

Motion Carried unanimously

FOSTER We have one case today BZA2006-86. Please note that there are three variances on it. Jess will you enlighten us about the report?

McNEELY **BACKGROUND:** The application area is a live music venue featuring local and national artists. The building sits over 1,000 feet north of Kellogg, with no visibility from Kellogg. The applicant historically had a sign along the Kellogg frontage, which was removed with the widening of Kellogg. In 2002, the applicant erected the current 168 square foot sign immediately north of the neighboring truck company sign. The images provided by the applicant demonstrate that the truck company 168 square foot sign is 35 feet tall, 10 feet taller than the applicant's current 25-foot tall sign. The applicant wishes to replace their 168 square foot sign with a 160 square foot sign, see the attached elevation. The applicant has a 63-foot wide private drive frontage along Kellogg, which under the sign code grants the minimum sign size of 100 square feet. The sign code limits the applicant's sign to 25 feet in height. Because the applicant's sign site is limited, the sign would be less than the code required 150-foot separation from the neighboring truck company sign. The surrounding area is zoned "GC" General Commercial. Surrounding land uses include truck sales to the east, and a nursery/garden center to the west.

ADJACENT ZONING AND LAND USE:

NORTH	"GC"	Entertainment facility
SOUTH	"GC"	Kellogg/US 54
EAST	"GC"	Truck sales
WEST	"GC"	Nursery and garden center

UNIQUENESS: It is staff's opinion that this property is unique for several reasons. The applicant's building and parking is not visible from Kellogg due to significant separation. The

applicant's facility regularly hosts live entertainment which attracts visitors from the greater surrounding region; these visitors may not be familiar with the facility location. The Kellogg widening project relocated the applicant's sign to a small parcel, next to a taller, neighboring sign. While the applicant has a 25-acre site, their access drive frontage along Kellogg is only 63 feet wide, allowing for the minimum 100 square foot sign in GC zoning along an expressway.

ADJACENT PROPERTY: It is staff's opinion that the requested variances will not adversely affect the rights of adjacent property owners, as immediately surrounding properties are commercial uses fronting a highway. The requested variances will result in replacing a sign at the same location, with no increase in size, and an increase in height equal to the neighboring sign several feet away.

HARDSHIP: It is staff's opinion that the strict application of sign regulations would constitute an unnecessary hardship upon the applicant. The applicant's original sign was removed because of a public need to expand Kellogg. The applicant's resulting limited space in which to place a sign does not meet sign code requirements for sign separation, and limits the applicant to a minimum size. Also, the sign code limits the applicant to a visibility limiting height at this location.

PUBLIC INTEREST: It is staff's opinion that the requested variance would not adversely affect the public interest, as the proposed sign will have no more impact on the public than the original permitted sign at this location. Likewise, it is in the public interest to adequately direct the public to the applicant's site.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance would not oppose the general spirit and intent of the Sign Code. The purpose of the sign code is to eliminate potential hazards, and balance visibility needs with aesthetic concerns. The applicant's proposed sign is not excessive in size or height for this location, and will serve the necessary function of directing the public to the applicant's location.

RECOMMENDATION: Should the Board determine that the conditions necessary to grant the variance exist, the Secretary recommends approval of a variance to the Sign Code section 24.04.221(6) to waive the required 150-foot separation between signs, and a variance to section 24.04.221(3) to increase the permitted height of a sign from 25 feet to 35 feet, and a variance to section 24.04.221(4) to increase the permitted size of a site from 100 square feet to 160 square feet. The Secretary recommends that these variances be GRANTED subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan and elevation drawings.
2. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the the variance approval, unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be reviewed for compliance with conditions by the BZA; the board may then make recomendations to staff regarding enforcement of conditions.

Are there any questions of staff regarding these three variances?

FOSTER Jess, the letter that the applicant submitted mentioned 180 feet and this is 160 feet, was that lowered in the process of discussions for the filing or something?

MCNEELY The actual application form submitted requested a 160 square feet and I confirmed with the agent for the applicant what they were requesting, and they confirmed that they will go with the 160 square feet.

FOSTER Is this sign on their land or is it on the Trucking Land?

McNEELY The sign is on this small 15 x 30 strip of land and the driveway that they own. In order to request a variance you have to have effective ownership of property. The legal staff reviewed the easements and determined that the Cotillion did have the right to request this variance.

FOSTER It is not an off premise sign?

MCNEELY No. You will see that the Cotillion has the rights to this small parcel where the current sign and the proposed sign will be, and this long strip of land is the driveway that connects to the parking and the facility. If that were not connected we would have another issue in front of us.

FOSTER I remember a case about the Peter Built sign, and how did they get it raised to 35 feet?

McNeely I do not believe that was a case that came before this body. The difference between their sign height is that the Peter Built has a greater frontage along Kellogg.

FOSTER Any more questions? Okay we will hear for the applicant

Greg Ferris, 144 South A Country Court; also with me today is Mr. Richard Leslie the owner of the Cotillion. Jess summarized very well. The City staff required me to provide a deed to show that we did have control of the property both the driveway and the site where the sign is. That document was submitted and we ran it through the legal department, they were satisfied that the Cotillion has the ability to perform this request. The Peter Built was allowed this amount of signage because of the amount of land. We are requesting three things but we are not changing three things on the sign. The sign needs to be changed out because of wear, and since we need to change it we need to change or upgrade the height of the sign for better viewing. The sign is obscured by both the trucks and the far east Peter Built sign. While Kellogg is not elevated at that point, there are some elevation changes in that area that contributed to limited visibility of that sign. I live west of the Cotillion and it obscured the visibility of that sign. The Cotillion originally had a sign on the outside where the Peter Built sign was until the condemnation case went through and they had to move their sign base

on the City's taking on the right-of-way for Kellogg. When that sign was moved it become a non-conforming sign. We are trying to bring it into total compliance today by requesting these variances. Clearly it is a very unique situation in that there is condemnation, there is a narrow drive, there is a large lot that does not have a large frontage and also the type of business is unique. The main thing that creates the criteria in the zoning code or state law is that this was not created as a hardship by the applicant but rather it was created by the taking of the City. This area is clearly an industrial commercial area that will have a no negative impact on the adjacent properties. If we are not allowed to raise that sign there are visibility issues. Jess adequately pointed out that the Cotillion business is unique to this area in that it brings people in off of Kellogg that may not be familiar with where they are going. It creates a hardship if traffic is not able to see the sign. It will not affect negatively the public health. If someone knew that the Cotillion was somewhere in this area, at sixty miles per hour, it would be better for public health and safety if there was a clearly visible sign so they could see it to navigate the turn without trying to change lanes. Spirit and intent is to have a sign that is visible. This clearly is a case that the Board of Zoning Appeals can approve today. Staff comments are appropriate. We have no problems with the conditions that are listed and are there any questions?

FOSTER How many people does the building hold?

FERRIS The building will hold two thousand people.

FOSTER You did your homework well, is there any other questions? I will now confine the discussion to the board. Jess, I will ask that you join us again. Jess are we setting any precedence here because most of the time this board has voted for 35 feet, it is usually been because Kellogg has been elevated? Is there any kind of precedence that we are setting along that part of the highway?

MCNEELY I do not think we are setting a negative precedence, because there is an uniqueness. If you look at the trucks along the frontage, you will see there is a need for the elevation. I think if someone was just asking for increased height without those types of conditions, I do not believe we would recommend approval. I believe there is enough uniqueness here that it warrants a variance.

FOSTER I can see there will be many people coming to this and there is some advantage to have a good sign. Mr. Anthimides?

ANTHIMIDES Having been to the Cotillion, I think it is a good thing for them to have a sign that is visible. Having driven 60- 65 miles per hour down Kellogg you can hardly see the sign now. There have been a few times that I had to slam on my brakes in order to make the turn in because I nearly missed seeing the sign. I believe this change in the sign will make a good change.

RUANE I speak in favor of the variance because it is very hard to see at dusk.

FOSTER You mention dusk, and most of their activities will be late evening. Do we have a motion?

GREENLEE I move that the board accept the finding of the facts as set forth in the Secretary's Report and that all five conditions set out in section 2.12.59.b of the City Code as necessary for the granting of the three variances has been found to exist, and that the variances be granted subject to the conditions set out in the Secretary's Report.

MARKHAM Seconded.

FOSTER Any further questions?

Motion Carried Unanimously

FOSTER Herb, do you have any reports?

SHANER I have nothing to report.

FOSTER If you look at the last case on the report on condition number three, those conditions were changed. In talking with Sharon before the meeting, she felt a closed session would be desirable. Since it would be talking about your position in regard to how you would handle it legally. She is suggesting that we do it next time and she would be prepared to talk about it. If you recall, we used to have a null and void statement. I think we need to be versed on this before we hear affected issues. Does anyone have a problem with it being on the agenda next time?

RUANE I think we should refer to legal as to whether it is placed on the agenda as an executive session item and allow them to frame the question.

FOSTER This is for our own education. Jess, do we have any cases next month?

McNEELY No, we do not. We can plan for February.

DICKGRAFE I will put together a memorandum, and because it is legal interpretation or legal advice regarding the wording of the resolution, it is appropriate for executive session.

FOSTER Any other items? I want to wish everyone a Merry Christmas and a Happy New Year. Do I hear a motion to adjourn?

GREENLEE Moved

ANTIMIDES Seconded

Motion Carries Unanimously

ADJOURNED 2:13PM